

# Indiana Rules of Court

## Rules of Procedure for Original Actions Writs of Mandate and Prohibition

*Including Amendments Received Through January 1, 2010*

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### Rule 1. Scope of Rules

- (A) **Jurisdiction of Supreme Court Over Original Actions for Writs of Mandamus or Prohibition.** The Supreme Court has exclusive, original jurisdiction to supervise the exercise of jurisdiction of all inferior state courts, including the Court of Appeals, by virtue of Indiana Constitution, Article 7, Section 4, and Ind. Appellate Rule 4(B)(3).
- (B) **Nature of Original Actions Governed by These Rules.** Actions commenced in the Supreme Court pursuant to the authority in section (A) above for writs of mandamus or prohibition against inferior state courts and the judge or judges thereof and concerned solely with the question of jurisdiction shall be known as **original actions** and shall be governed exclusively by these Rules.
- (C) **Parties to Original Actions.** The party who commences an original action is the Relator. The parties against whom an original action is commenced are the Respondents. The Respondents are always an inferior state court and the judge or judges thereof. In rare instances, a court clerk may be an additional Respondent.
- (D) **Writs Against Administrative Agencies.** Complaints filed pursuant to IC 34-27-3-1 et seq. for writs of mandamus or prohibition against administrative agencies and the members thereof are not **original actions** governed by these Rules. Those complaints are to be filed in the trial court having jurisdiction over the action.
- (E) **Writs in Aid of Appellate Jurisdiction.** Petitions for writs in aid of appellate jurisdiction are not **original actions** governed by these Rules. Those petitions are to be filed in the court having initial appellate jurisdiction of a pending appeal or of an appeal about to be filed. The authority of the Supreme Court to issue writs in aid of its appellate jurisdiction is Appellate Rule 4(B)(4) and Appellate Rule 8. The authority of the Court of Appeals to issue writs in aid of its appellate jurisdiction is Appellate Rule 8.
- (F) **Title.** These Rules shall be known as the Rules of Procedure for **Original Actions** and shall be cited in accordance with Ind. Appellate Rule 22(B).

### Rule 2. Applications for Writs

- (A) **Conditions Precedent to Making Applications for Writs.** Except in original actions involving a change of venue from the judge or county, no application for a writ of mandamus or prohibition will be entertained unless the Relator has raised the jurisdictional question by written motion which the trial court has denied or not ruled upon timely. The motion shall allege the absence of jurisdiction of the respondent court or the failure of the respondent court to act when it was under a duty to act.
- (B) **Submission of Applications to Supreme Court Administrator.** Except for application for emergency writs, all applications for writs of mandamus or prohibition, along with the filing fee, shall be submitted in person or by mail to the Supreme Court Administrator, 315 State House, Indianapolis, Indiana 46204, telephone (317) 232-2540. Relator shall serve Respondents and all interested parties on the same day the Relator's writ application is submitted in person or by mail to the Supreme Court. Delivering a copy of the papers to an interested party's office is personal service on that party within the meaning of these Rules. If emergency relief is requested, Relator must submit the application papers to the Administrator in person after personal service on Respondents and all interested parties. Otherwise, service on the Respondents and interested parties shall be accomplished in the same fashion as service on the Administrator, except that personal service shall always be acceptable.
- (C) **Filing of Applications.** The Supreme Court Administrator shall arrange to have original action applications filed with the Clerk. At the time of filing Relator's filing fee will be deposited.

**(D) The Supreme Court Administrator shall submit all original action applications to the Chief Justice or Acting Chief Justice after filing.** If the application is incomplete or in improper form or seeks an unquestionably inappropriate remedy, the Chief Justice or Acting Chief Justice shall enter an order dismissing the application without the intervention of the full Court. In all other cases, the Chief Justice or Acting Chief Justice shall determine whether the case should be immediately set for hearing or referred to the full Court.

If the Chief Justice or the full Court decides to set the case for hearing, the Supreme Court Administrator shall complete and file the notice of hearing. The Supreme Court Clerk shall send copies of the notice of hearing to Relator, Respondents, and all interested parties, including the Attorney General as required by Ind. Original Action 6(D). However, the Court may decide to grant or deny the original action without hearing.

**(E) Original Actions Viewed With Disfavor.** Original actions are viewed with disfavor and may not be used as substitutes for appeals.

**(F) “Application Papers”, “Papers”, and “Paper” Defined.** The words “application papers”, “papers”, and “paper” as used in these Rules shall mean and include, without limitation, all petitions, records of the proceedings, briefs, notices of hearing, affidavits of emergency, writs, preliminary responses, and returns.

**(G) “Parties” and “Party” Defined.** The words “parties” and “party” as used in these Rules shall mean and include, without limitation, all Relators, Respondents, parties opposing Relator in the respondent court, and the Attorney General, if service on the Attorney General is required by Orig.Act.R. 6(E).

### **Rule 3. Application Papers**

**(A) Petition.** All applications for writs of mandamus or prohibition shall be made by petition. The petition shall be verified or affirmed and shall state facts showing clearly that:

- (1) the Supreme Court has jurisdiction over the application as an original action;
- (2) the application is made expeditiously after the jurisdiction of the respondent court became an issue;
- (3) the respondent court has exceeded its jurisdiction or the respondent court has failed to act when it was under a duty to act;
- (4) the absence of jurisdiction of the respondent court or the failure of the respondent court to act when it was under a duty to act has been raised in the respondent court by a written motion filed therein and brought to the attention of the respondent judge, and the written motion has been denied or not ruled on timely; provided, however, that the petition need not show this in applications involving a change of venue from the judge or county;
- (5) the denial of the application will result in extreme hardship; and
- (6) the remedy available by appeal will be wholly inadequate. See Form No. 1.

Original action applications which do not include all of the applicable allegations listed above shall be rejected by the Chief Justice or Acting Chief Justice.

**(B) Brief.** The Relator shall submit a separate supporting brief with Relator's petition. The Relator shall set forth verbatim in the brief, indented and single-spaced, the relevant parts of all cases, statutes, and other authorities relied upon, but need not conform the brief otherwise to the rules applicable to appellate briefs. The brief need not be bound.

**(C) Record of Proceedings--Certification.** At the time the Relator submits the original action petition, the Relator shall submit a certified record of the proceedings from the respondent court. The record shall contain copies of all relevant pleadings, motions, orders, entries, and other papers filed, tendered for filing, or entered in the respondent court. The record also shall include a current copy of the chronological case summary. In the event a relevant transcript of any evidence in the record exists, it shall be submitted and shall have been certified by the appropriate court reporter and the respondent judge. The last page of the original action record shall be a certificate of the clerk of the respondent court which clearly demonstrates that all the papers contained in the record have been filed, tendered for filing, or entered in the respondent court. The original action record need not be bound like an appellate record, but it should contain a table of contents at the beginning and should be enumerated for purposes of citation to the record.

**(D) Filing Fee.** Relator shall tender the filing fee of one hundred twenty-five dollars (\$125) when the Relator submits the original action application to the Supreme Court Administrator. The fee is not applicable in a case prosecuted as a pauper cause or on behalf of a governmental unit. If Relator seeks pauper status, Relator shall submit with the original action papers an affidavit of indigency detailing Relator's assets and financial condition and seeking waiver of the filing fee.

- (E) **Writs.** A Permanent writ form shall be submitted, and an Alternative writ form may also be submitted by the Relator. If emergency relief is sought, an emergency writ form also shall be submitted.
- (1) *Emergency Writ.* An Emergency Writ is an order that may be granted prior to a hearing. It must be accompanied by a petition for emergency writ demonstrating that a writ must be issued to maintain the status quo and prevent irreparable injury until the application can be heard. The Emergency Writ operates as a temporary stay of the trial court proceedings until the Supreme Court hears and rules upon the original action application. All original action applications which include a request for emergency writ shall be presented in person to the Supreme Court Administrator after personal service on the Respondents and all other interested parties. The Administrator shall submit all applications for emergency writ to the Chief Justice, if available, or to the Acting Chief Justice for a determination as to whether or not a sufficient emergency exists to require a stay. If the Chief Justice or Acting Chief Justice grants the emergency writ, the writ shall be filed immediately and the original action may be set for hearing. See Form No. 5. The filing of a petition for emergency writ shall not obviate the need to file the other application papers required by these rules including the petition for writ of mandamus or prohibition.
  - (2) *Alternative Writ.* An Alternative Writ is an order that requires Respondents to take action (mandamus), to cease action (prohibition), or both. If an Alternative Writ is issued, the Respondents shall file a return with the Court no later than twenty (20) days after the filing of the writ. A “return” is a pleading submitted by the respondent court showing compliance with the writ or stating reasons why the writ should not be made permanent. See Form No. 2. The return shall be submitted in person or by mail to the Supreme Court Clerk for filing.
  - (3) *Permanent Writ.* A Permanent Writ is an order, issued after the application is made, which is immediately permanent. It dispenses with the general practice of allowing the Respondents to file a return. See Form No. 3.
- (F) **Notice of Hearing.** The Relator shall submit a notice of hearing with Relator's original action petition, leaving the date and time of the hearing blank. See Form No. 4.
- (G) **Preliminary Response.** The Respondents, or any party opposing Relator in the respondent court, or the Attorney General, if service on the Attorney General is required by Orig.Act.R. 6(E), may submit to the Administrator at any time before the hearing a preliminary response showing any factual or legal reason why the original action application should be denied. The Administrator shall have the preliminary response filed with the Clerk of the Supreme Court.
- (H) **Number of Copies.** Each party shall submit to the Administrator the original and five (5) copies of each application paper, including the record.
- (I) **Production.** All application papers shall be typewritten or printed on 8 1/2 x 11 inch white, opaque, unglazed paper of a weight normally used in legal typing and printing, and shall be reproduced by a copying or duplicating process that produces a clear, black image.
- (J) **Documents and Information Excluded from Public Access and Confidential Pursuant to Administrative Rule 9(G)(1).** Documents and information excluded from public access pursuant to Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G).

#### **Rule 4. Hearing on Applications**

- (A) **Scheduling of Hearing.** The Supreme Court may set the hearing on the application for a date usually not less than one week from the date of submission of the application to the Administrator. An earlier hearing date may be authorized if Relator establishes in Relator's original action petition or emergency writ petition that an extreme emergency exists which necessitates an earlier hearing.
- (B) **Nature of Hearing.** The hearing on the application is only upon the record of the proceedings in the respondent court. No testimonial or documentary evidence shall be offered or received at the hearing.
- (C) **Time Allowed for Arguments at Hearing.** Each side to an original action usually will be allowed thirty (30) minutes for oral argument. A party is not obligated to use all of the allowed time, and the court may terminate the arguments whenever in its judgment further argument is unnecessary. Appearance by the respondent judge or the judge's counsel is not necessary; the party opposing the Relator in the trial court may oppose the original action application. In the event the respondent judge or the judge's counsel appear, the respondent judge or the judge's counsel shall be given an opportunity to speak regardless of whether others opposing the original action have used the 30 minutes allotted to that side.
- (D) **Order and Content of Argument.** The Relator shall open and may conclude the argument by reserving part of the Relator's time for rebuttal before beginning the argument. The parties will not be permitted to read at length from the record of the proceedings, briefs, or authorities during oral argument.

- (E) **Deliberation After Argument.** Upon completion of the oral arguments, the parties will be asked to leave the Supreme Court Conference Room while the Court deliberates. When the Court concludes its deliberation, the parties will be recalled into the Supreme Court Conference Room to learn the Court's decision. In cases where the Court is unable to reach an immediate decision or where a Justice is absent, the Court may delay ruling until such time as agreement is reached or the absent Justice is able to consider the case.

#### **Rule 5. Disposition of Applications**

- (A) **Application Granted--Issuance of Writ--Filing With Clerk--Disposition.** If the application for writ of mandamus or prohibition is granted, either an alternative or permanent writ will be issued. If the alternative writ is issued, the respondent court shall be given 20 days to file a return. See Orig.Act.R. 3(E)(2). The return shall show compliance with the writ or state reasons why the writ should not be made permanent.

If the return shows compliance with the alternative writ, the Supreme Court will enter an order dismissing the original action as moot.

If the return contests the alternative writ, the Relator shall have five (5) days after service of the return to file a brief in opposition to the return. Any parties opposing the alternative writ other than the respondents also may file a further brief no later than five (5) days after service of the return. For purposes of this rule, Ind.Appellate Rule 23(A) applies but Ind.Appellate Rule 24(D) does not. See Orig.Act.R. 6.

The Supreme Court thereafter will dispose of the original action by written order or opinion without further hearing or the filing of any further papers, unless requested by the Court.

- (B) **Application Denied.** If the application is denied, an order of denial shall be entered expeditiously. The denial of the application will end the proceedings, regardless of whether the Court has conducted a hearing.
- (C) **Petitions for Rehearing.** No petitions for rehearing or motions to reconsider shall be filed after final disposition of the original action.

#### **Rule 6. Submission, Filing, and Service of Application Papers**

- (A) **Submission.** All application papers or preliminary responses shall be deemed submitted to the Supreme Court Administrator when personally delivered or when deposited with the United States Postal Service or with any properly bonded carrier, properly addressed and with charges prepaid.
- (B) **Service of Application Papers Submitted Prior to Hearing.** A copy of each application paper submitted to the Administrator by the Relator shall be served by the Relator upon the Respondents, upon any party opposing Relator in the respondent court, and upon the Attorney General when required by Orig.Act.R. 6(E). If the papers are submitted to the Administrator in person, such service shall be by personal delivery and accomplished immediately before submission to the Administrator. If the papers are mailed to the Administrator, service on the interested parties may be by mail if simultaneously deposited with the United States Postal Service or with any properly bonded carrier, properly addressed and with charges prepaid.
- (C) **Service of Preliminary Response.** Any preliminary response may be served upon the Relator by personal service or by depositing the same with the United States Postal Service or with any properly bonded carrier, properly addressed and with charges prepaid. The preliminary response shall be served at or before the time of its submission to the Administrator and in all cases service must be effective before a hearing on the original action. Personal delivery shall include leaving a copy of the paper with a responsible person in the office of the party or the attorney of the party served.
- (D) **Filing and Service of Returns and Briefs After Hearing.** Where a hearing on an application has resulted in the granting of an alternative or permanent writ, the filing of any return or briefs shall be directly with the Supreme Court Clerk. Such papers shall also be served on opposing parties at or before the time of filing. Filing with the Clerk and service upon an opposing party shall be deemed accomplished when done personally or upon deposit of the paper with the United States Postal Service or with any properly bonded carrier, properly addressed and with the charges prepaid.
- (E) **Service on Attorney General--When Required.** In all original actions arising out of criminal cases and in all other original actions in which the State of Indiana has or may have an interest, each party shall serve the Attorney General with a copy of each paper submitted to the Administrator or filed with the Clerk.
- (F) **Proof of Service of All Application Papers Submitted to the Administrator or Filed With Clerk Required.** Where personal service is required of Relator or where personal service is made but not required, two copies of the acknowledgment of service or certificate of service shall be submitted as soon as service is accomplished. The certificate of service shall be signed by the person making service. The acknowledgment of service shall be signed by the person served. The acknowledgment or certificate of service shall state the date of service and the address of each person served.

When service is made by mail or carrier, two (2) copies of the receipt from the carrier, the return receipt from the United States Postal Service or the certificate of the person making service as to the deposit with the United States Postal Service or carrier shall be submitted or filed promptly with the Administrator or Clerk, as the case may be. Provided that, the Administrator or Clerk may permit a paper to be submitted or filed without containing or being accompanied by an acknowledgment or certificate of service, but shall require an acknowledgment or certificate of service to be submitted or filed promptly thereafter.

## **FORMS**

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|---|-----------------------------|-------------------------|---------------------------|
| FORM NO. 1. CAPTION FOR PETITION FOR WRIT<br><i>Amended Oct. 29, 1993, effective Jan 1, 1994.</i>                         | <a href="#">WordPerfect</a> | <a href="#">MS Word</a> | <a href="#">Adobe PDF</a> |
| FORM NO. 2. ALTERNATIVE WRIT OF MANDAMUS<br><i>Amended Oct. 29, 1993, effective Jan. 1, 1994.</i>                         | <a href="#">WordPerfect</a> | <a href="#">MS Word</a> | <a href="#">Adobe PDF</a> |
| FORM NO. 3. PERMANENT WRIT OF MANDAMUS<br>AND PROHIBITION<br><i>Amended Oct. 29, 1993, effective Jan. 1, 1994.</i>        | <a href="#">WordPerfect</a> | <a href="#">MS Word</a> | <a href="#">Adobe PDF</a> |
| FORM NO. 4. EMERGENCY WRIT OF MANDAMUS<br>AND PROHIBITION FORM<br><i>Adopted effective Jan. 1, 1994.</i>                  | <a href="#">WordPerfect</a> | <a href="#">MS Word</a> | <a href="#">Adobe PDF</a> |
| FORM NO. 5. NOTICE OF HEARING FORM<br><i>Former Form 4 amended and redesignated as Form 5<br/>effective Jan. 1, 1994.</i> | <a href="#">WordPerfect</a> | <a href="#">MS Word</a> | <a href="#">Adobe PDF</a> |
| FORM NO. 6. CERTIFICATE OF SERVICE FORM<br><i>Adopted effective Jan. 1, 1994.</i>   | <a href="#">WordPerfect</a> | <a href="#">MS Word</a> | <a href="#">Adobe PDF</a> |